



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA-HQ-OW-2011-0515, FRL 9666-8]

RIN 2040-AF38

Phosphorus Water Quality Standards for Florida Everglades

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a rule that identifies provisions of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area (Phosphorus Rule) and Florida's Amended Everglades Forever Act (EFA) that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. EPA is promulgating this final rule following EPA's disapproval of these provisions and EPA's specific directions to the State of Florida to correct these deficiencies in the Phosphorus Rule and EFA. EPA's disapproval, specific directions to the State, and this rule implement two orders by the U.S. District Court for the Southern District of Florida.

DATES: This final rule is effective [insert date 30 days after publication in the **Federal Register**]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [insert date 30 days after publication in the **Federal Register**].

ADDRESSES: An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.regulations.gov> to view public comments at Docket number EPA-HQ-OW-2011-0515, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Docket Facility. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202-566-1744 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: Mario Sengco, Standards and Health Protection Division, Office of Science and Technology, Mail Code: 4305T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566-2676; email: sengco.mario@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What entities may be affected by this rule?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging phosphorus to waters upstream of the Everglades Protection Area could be indirectly affected by the Phosphorus Rule and EFA, although not specifically by this rule because the rule merely publishes the text changes that reflect the prior disapproval by the EPA of certain provisions of the Phosphorus Rule and EFA. Any indirect affect to entities would be because the water quality standards contained in the State’s regulation and statute are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. With this in mind, categories and entities that ultimately may be indirectly affected include:

Category	Examples of potentially indirectly affected entities
Water Management Districts	Entities responsible for managing point source discharges near the Everglades Protection Area.
Nonpoint Source Contributors	Entities responsible for contributing nonpoint source runoff near the Everglades Protection Area.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be affected indirectly by this action. This table lists the types of entities of which EPA is now aware that potentially could be indirectly affected by this action. Other types of entities not listed in the table could also be affected directly or indirectly. Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the Everglades Protection Area, might be

indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should examine the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section, entitled FOR FURTHER INFORMATION CONTACT.

B. How do I get copies of this notice?

Docket. EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2011-0515. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Publicly available docket materials are available electronically through www.regulations.gov and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the public Reading Room is (202) 566-1744 and the telephone number for the Water docket is (202) 566-2426.

Incorporation by reference. Documents that are being incorporated by reference through this rule may be found in the docket as described above, on EPA website established for this rulemaking at http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm, and through the National Archives and Records Administration (NARA) by sending a request by email to fedreg.info@nara.gov, or by mail to the following address: Office of the Federal Register (NF), The National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For information on the availability of this material at NARA, call 202-741-6030, or go to the following website http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm.

II. Background

EPA is promulgating this rule to identify provisions of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area (Phosphorus Rule) and Florida's Amended Everglades Forever Act (EFA) that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. EPA is promulgating this final rule following its disapproval of these provisions and EPA's specific directions to the State of Florida to correct these deficiencies in the Phosphorus Rule and EFA. EPA's disapproval and specific directions to the State implement two orders by the U.S. District Court for the Southern District of Florida. Pursuant to the Court's orders and consistent with Clean Water Act section 303(c), EPA provided the State a period of time to correct the deficiencies. The State has not corrected the deficiencies within that time period. Therefore, EPA is promulgating this rule. The rule incorporates by reference two documents that identify the specific provisions of Florida's Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the Clean Water Act. The specific provisions that are not applicable water quality standards are indicated with "strikeout" text in the documents that are incorporated by reference into the Code of Federal Regulations.

A. Statutory and Regulatory Background

Section 303(c) (33 U.S.C. 1313) of the Clean Water Act (CWA) directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for waters of the United States within the State. Section 303(c) and EPA's implementing regulations (40 CFR Part 131) provide that water

quality standards shall include designated uses of the water and water quality criteria necessary to protect those uses.

States must submit any new or revised water quality standards for EPA review and approval/disapproval. EPA must approve/disapprove any new or revised standards within 60-90 days. (Section 303(c)(3)). If EPA disapproves any standard, EPA is to specify the changes to meet the requirements of the CWA. If the changes are not adopted by the State, EPA is to promulgate standards to address the necessary changes in the State standards that EPA has disapproved. In this rulemaking, EPA is identifying the portions of Florida's standards that EPA disapproved and that, after EPA notification of necessary changes, the State has not adopted through changes in State publications.

B. Florida's Phosphorus Rule and Everglades Forever Act

1. Florida's Phosphorus Rule

In 2005, the Florida Department of Environmental Protection (FDEP) submitted to EPA for review pursuant to CWA section 303(c), provisions of Florida Administrative Code ("FAC") 62-302.540 entitled "Water Quality Standards for Phosphorus Within the Everglades Protection Area" (Phosphorus Rule or Rule). The Rule established a numeric water quality criterion for phosphorus as well as implementing provisions for the numeric criterion within the Everglades Protection Area. In 2005 and 2006, EPA issued a series of decisions approving certain provisions of the Phosphorus Rule and concluding that other provisions were not new or revised water quality standards and did not require EPA approval or disapproval under CWA section 303(c).

2. Florida's Everglades Forever Act

The Florida Legislature enacted the Everglades Forever Act in 1994 to maintain and restore the ecosystem of the Everglades. See *Miccosukee Tribe of Indians v. United States*, 105 F.3d. 599, 601 (11th Cir. 1997). EPA subsequently reviewed and approved one section of the EFA (section 4(f)) as a new or revised water quality standard in 1999. The Legislature enacted amendments to the EFA in 2003. EPA reviewed the amendments and issued a decision in 2003 that the amendments were not new or revised water quality standards requiring EPA approval or disapproval under section 303(c) of the CWA.

C. Litigation and Subsequent EPA Actions

In consolidated litigation, environmental and Native American plaintiffs challenged (1) EPA's 2003 decision that the EFA amendments were not water quality standards and (2) EPA's 2005 and 2006 decisions regarding the Phosphorus Rule. In a July 29, 2008 decision, the U.S. District Court for the Southern District of Florida upheld in part and remanded in part EPA's decisions. *Miccosukee Tribe of Indians & Friends of the Everglades v. U.S. Environmental Protection Agency, Florida Department of Environmental Protection, et al.*, No. 04-21488-CIV-Gold/McAliley (S.D. Fla.). The Court upheld EPA's 2005 approval of the Phosphorus Rule's numeric phosphorus criterion and the "four-part" test for determining attainment of the criterion. The Court overturned (1) EPA's decision that certain implementing provisions of the Phosphorus Rule were not new or revised water quality standards, and (2) EPA's approval of other provisions of the Phosphorus Rule, finding EPA's approval to be arbitrary and capricious. The Court also rejected EPA's position that the legislative amendments to the EFA did not constitute new or revised water quality standards subject to EPA review (and approval or disapproval) under section 303(c) of the CWA. The Court remanded to EPA to take further action consistent with the Court's decision.

1. EPA's December 2009 Determination

On December 3, 2009, EPA issued a new Determination in response to the Court's remand. Consistent with the Court's 2008 decision, EPA disapproved certain amendments to the EFA. It is those disapproved provisions of the EFA that are, in part, the subject of this rulemaking. In addition, EPA reviewed the provisions of the Phosphorus Rule that the Court either found were new or revised standards or that the Court had held EPA's prior approval invalid. Consistent with the Court's decision, EPA disapproved certain provisions of the Phosphorus Rule in December of 2009 and those disapproved provisions also are reflected in this final rulemaking.

2. Court's April 14, 2010 Order

Plaintiffs challenged EPA's December 2009 Determination, alleging, in part, that EPA failed to (1) specify the changes that Florida must make to the Phosphorus Rule and EFA to bring them into compliance with the CWA and (2) commit to promulgate if the State fails to act. The Court, in an order dated April 14, 2010, remanded EPA's 2009 Determination and ordered EPA to issue an Amended Determination (AD) by September 3, 2010. *Miccosukee Tribe of Indians & Friends of the Everglades v. U.S. Environmental Protection Agency, Florida Department of Environmental Protection, et al.*, No. 04-21488-CIV-Gold/McAliley (April 14, 2010, S.D. Fla.)(Order). While the Court did not take issue with EPA's disapprovals, the Court nevertheless ordered that EPA's AD "shall specifically direct the State of Florida to correct deficiencies in the Amended EFA and Phosphorus Rule that have been invalidated," attaching copies of the Rule and EFA with strikeout markings indicating the exact language from the Rule and EFA that the EPA was to direct the State to correct. Order at 44. The Court ordered that in

the AD, “EPA shall require the State of Florida to commence and complete rulemaking for the Phosphorus Rule within 120 days from the date of the Amended Determination and shall require amendments to the Amended EFA to be enacted by July 1, 2011.” Order at 44-45. The Court further ordered that “[i]n the event the State of Florida fails to timely act, the EPA shall provide timely notice, and the EPA Administrator “shall promulgate such standard[s]” pursuant to 33 U.S.C. 1313(c).” Order at 45. This rulemaking complies with that Court order.

3. EPA’s September 3, 2010 Amended Determination

Consistent with the Court’s April 14, 2010 Order, EPA prepared an Amended Determination (AD) dated September 3, 2010. The AD directed the State of Florida to correct deficiencies in the Phosphorus Rule and Amended EFA. The AD included as attachments copies of the Phosphorus Rule and EFA with strikeout markings indicating the language changes necessary to meet Clean Water Act requirements. EPA’s AD stated that if FDEP has not finalized revisions by January 1, 2011 and the Legislature has not enacted amendments to the EFA by July 1, 2011, then EPA would initiate rulemaking to promulgate the necessary changes consistent with the Court’s Order.

Although FDEP initiated a rulemaking, with a notice of rule development published on March 26, 2010, to adopt the necessary revisions to the Phosphorus Rule and the EFA amendments consistent with EPA’s AD, the State rulemaking agencies did not complete that process on the Phosphorus Rule changes by January 1, 2011. Nor has the State completed its rulemaking process on the Phosphorus Rule since that date. The Florida Legislature also did not introduce or enact any amendments to the EFA consistent with EPA’s AD. The Florida Legislature adjourned and did not reconvene prior to July 1, 2011. Therefore, EPA proceeded,

consistent with the Court's Order and EPA's AD, to initiate this rulemaking process to promulgate the proposed federal rulemaking identifying the necessary changes to the Phosphorus Rule and EFA to meet Clean Water Act requirements.

III. EPA's Proposal and Public Comments Received.

Proposed Rule: EPA's proposed rule identified those provisions in the Phosphorus Rule and Everglades Forever Act (EFA) that EPA had disapproved and therefore are not applicable water quality standards for purposes of the CWA. The provisions are those that EPA previously disapproved in December 2009 that the Court identified in its April 2010 Order, and that EPA subsequently identified in its September 2010 AD. EPA initiated this rulemaking to promulgate the necessary changes to the Phosphorus Rule and EFA, consistent with the April 2010 Order and EPA's AD, after the State failed to make changes to the regulation and statute, respectively, by specified dates.

For the purposes of codifying the changes, EPA proposed to incorporate by reference into the Code of Federal Regulations copies of the Phosphorus Rule and EFA with the strikeout markings, identifying the provisions and language that are not applicable water quality standards for purposes of the CWA. EPA explained that the approach of incorporation by reference was the most appropriate among the approaches that the Agency considered to correct the deficiencies in the State's regulation and statute. Therefore, copies of the two documents to be incorporated were placed in the rulemaking docket. In addition, EPA identified the specific provisions of the Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the CWA in Tables 1 and 2 of the proposal.

EPA further explained in the proposal that the remaining provisions of the Phosphorus Rule and EFA either (1) had already been approved by EPA as new or revised water quality standards (i.e., are applicable water quality standards for the purposes of the CWA), or (2) are not water quality standards subject to EPA review and approval (or disapproval) under the Clean Water Act. Therefore, EPA did not propose to promulgate any of the remaining provisions that EPA had previously approved or that are not water quality standards.

For the convenience of the reader and to improve the readability of the two documents to be incorporated by reference, EPA included in its proposal a few minor text changes to the Phosphorus Rule and EFA in the docket. These changes were identified by underline. EPA included these few text changes in a submission filed with the Court and the Court subsequently indicated that it would modify its April 2010 to reflect these changes. EPA added text when deletion of the disapproved language rendered the remaining text difficult to understand. For example, in EFA section 10, EPA added text to restore language that existed prior to enactment of EFA amendments. In these sections, EPA did not propose to establish new or revised water quality standards with these text changes. Similarly, for ease of readability, the docket versions of the Phosphorus Rule and Amended Everglades Forever Act struck the definitions of “optimization” (which corresponded to regulatory language already disapproved) from sections 2(l) and 3(f), as discussed in the proposed rule preamble.

The public was given an opportunity to review the proposed rule and provide comments over a thirty-day period.

Comments: EPA received comments from eight separate commenters including the two litigants in the District Court case and other interested parties. A few commenters challenged

EPA's authority to promulgate this rule, arguing that the Agency lacks legal authority to promulgate a rule after disapproval of water quality standards when the remaining approved water quality standards meet CWA requirements. EPA disagrees that it has no authority to promulgate water quality standards following disapproval. CWA section 303(c) does not specifically address the issue. It was reasonable and consistent with the CWA for EPA to promulgate this final rule that identifies only those provisions of Florida law that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act, where EPA concluded that the State should revise its existing standards to remove the disapproved provisions and the State failed to take such action. Otherwise, the provisions of the revised State water quality standards that EPA disapproved would remain applicable under State law. EPA's action will remove any potential for confusion and identify the provisions of State law that EPA has disapproved and that, therefore, are not in effect for federal CWA purposes.

To the extent EPA would be promulgating as federal regulations provisions of state water quality standards that EPA has approved (or provisions associated with approved water quality standards that are not themselves water quality standards), the CWA does not provide for such action. The CWA provides that when EPA approves a new or revised state water quality standard, "such standard shall thereafter be the water quality standard for the applicable waters of the State." CWA section 303(c)(3). Only if EPA disapproves a state water quality standard or makes a determination that a new or revised water quality standard is necessary to meet the requirements of the Clean Water Act under section 303(c)(4)(B) and the state fails to make the necessary changes, does the Act direct EPA to promulgate such water quality standards for navigable waters of the state. There are many provisions of the Phosphorus Rule that EPA

approved. EPA does not believe it would be appropriate to promulgate those provisions as federal regulations.

Second, except for the disapproved provisions of the EFA amendments, EPA has not approved or disapproved the remaining provisions of the EFA (with one exception) as new or revised water quality standards under the Clean Water Act. Therefore, it would not be appropriate for EPA to promulgate such provisions as federal water quality standards.

Copies of the public comments and the EPA's responses can be found in the docket associated with this rulemaking (see instructions above under General Information).

Final Rule: EPA has made no changes to its proposal in this final rule. EPA believes that the incorporation by reference approach described in the proposed rule, as well as the content of the proposed rule, remain appropriate for promulgation.

For the convenience of persons reviewing this final rule, EPA has included copies of the Phosphorus Rule and Amended Everglades Forever Act in the docket that included the strikeout markings indicating the language that EPA identifies as not being applicable water quality standards for purposes of the CWA. The provisions of the Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the CWA are summarized again here in Tables 1 and 2 below.

TABLE 1. 62-302.540 Provisions of Florida Administrative Code (F.A.C) (Water Quality Standards for Phosphorus Within the Everglades Protection Area) That Are Not Applicable Water Quality Standards for Purposes of the Clean Water Act

Section	Specific provision or language
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(1)(a)	Entire paragraph.
(1)(b)(2)	Entire paragraph.
(2)(b) – (f)	Entire paragraphs and subparagraphs.
(2)(h)	Entire paragraph.
(2)(l)	Entire paragraph.
(3)(a) – (b)	Entire paragraphs.
(3)(f)	Entire paragraph.
(3)(h)	Entire paragraph.
(4)(d)(2)(c)	Sentence only, “If these limits are not met, no action shall be required, provided that the net improvement or hydropattern restoration provisions of subsection (6) below are met.”
(5)(a)	Entire paragraph.
(5)(b)(2) – (3)	Entire paragraphs.
(5)(d)	Entire paragraph.
(6)(a) – (c)	Entire paragraphs and subparagraphs.

TABLE 2. Provisions of the Amended Everglades Forever Act (Florida Statute 373.4592) That Are Not Applicable Water Quality Standards for Purposes of the Clean Water Act.

Section	Specific provision or language
(2)(a)	Entire paragraph.
(2)(g)	Sentence 1, phrase “and further described in the Long-Term Plan”.
(2)(j)	Entire paragraph.

(2)(l)	Entire paragraph.
(2)(p)	Entire paragraph.
(3)(b) – (e)	Entire paragraphs.
(4)(a)	Sentence 9, phrase “design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including”
(4)(a)(4)	Sentence 1, phrase “however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan”.
(4)(a)(6)	Entire subparagraph.
(4)(e)(2)	Sentences 7, 8 and 9.
(4)(e)(3)	Sentence 3.
(10)	Sentence 1, phrase “to implement the pre-2006 projects and strategies of the Long-Term Plan.” Sentence 1, phrase “in all parts of the Everglades Protection Area”. Sentence 1, phrase “and moderating provisions”
(10)(a)	Entire paragraph.

IV. Statutory and Executive Order Reviews

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:
Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action merely clarifies the water quality standards concerning the phosphorus rule and the Amended EFA statute that are not water quality standards for purposes of the CWA and does not impose any information collection burden on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is

defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

As a result of the disapproval action by EPA in December 2009, the Florida Department of Environmental Protection already needs to ensure that permits it issues do not implement the provisions identified in this rule because those provisions are not applicable water quality standards for purposes of the CWA. In doing so, the State will have a number of choices associated with permit writing. While Florida's implementation of the rule (and EPA's earlier disapprovals) might ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today would not impose any of these as yet unknown requirements on small entities. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action merely clarifies the water quality standards concerning the Phosphorus Rule and the Amended EFA and does not impose any burden on anyone. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely clarifies the water quality standards concerning the Phosphorus Rule and the Amended EFA and does not apply to any government other than the State of Florida.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because this is an action in which the EPA has no discretion, i.e., EPA is mandated by the Court to take this action. Thus, Executive Order 13175 does not apply to this action. Nonetheless, consistent with the findings of the Executive Order and in response to a request from the Miccosukee Tribe submitted during the public comment period, EPA did choose to confer with the Tribe.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide

Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This action is not subject to E.O. 12898 because this action merely clarifies the water quality standards concerning the Phosphorus Rule and the Amended EFA.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective [insert date 30 days after publication in the **Federal Register**].

List of Subjects in 40 CFR Part 131

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 27, 2012

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, EPA amends 40 CFR Part 131 as follows:

PART 131-WATER QUALITY STANDARDS

1. The Authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D-[Amended]

2. Section 131.44 is added as follows:

§ 131.44 Florida.

(a) *Phosphorus Rule*. (1) The document entitled “Florida Administrative Code, Chapter 62-302, Surface Water Quality Standards, Section 62-302.540, Water Quality Standards for Phosphorus Within the Everglades Protection Area, Amended May 25, 2005, as annotated by EPA” (Phosphorus Rule), is incorporated by reference as described in paragraph (a)(2). EPA is not incorporating the full text of this document, but correcting specified portions of the Phosphorus Rule as directed by a federal district court as indicated by the strike out markings. The EPA is only incorporating by reference these crossed-out portions in the Florida Administrative Code 62-302.540. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA-HQ-OW-2011-0515) at <http://www.regulations.gov> electronically, at EPA's Water Docket (Address: 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202-566-2426), at the National Archives and Records Administration (NARA), and finally, on the EPA website associated with this rulemaking at http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm. For information on the availability of this material at NARA, call 202-741-6030, or go to the following website http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm. EPA adopts and identifies the portions of the document that have strikeout markings as portions of the Phosphorus Rule that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the Phosphorus Rule that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as federal regulations.

(2) In the Phosphorus Rule, strike the following text:

- (i) The entire paragraph (1)(a);
- (ii) The entire paragraph (1)(b)(2);
- (iii) The entire paragraph and subparagraphs (2)(b), (2)(c), (2)(d), (2)(e), (2)(e)(1), (2)(e)(2) and 2(f);
- (iv) The entire paragraph (2)(h);
- (v) The entire paragraph (2)(l);
- (vi) The entire paragraphs (3)(a) and (3)(b);
- (vii) The entire paragraph 3(f);
- (viii) The entire paragraph (3)(h);
- (ix) In (4)(d)(2)(c), the sentence, “If these limits are not met, no action shall be required, provided that the net improvement or hydropattern restoration provisions of subsection (6) below are met.”;
- (x) The entire paragraph (5)(a);
- (xi) The entire paragraph (5)(b)(2) and (5)(b)(3);
- (xii) The entire paragraph (5)(d);
- (xiii) The entire paragraph (6), including subparagraphs (6)(a), (6)(a)(1), (6)(a)(1)(a), (6)(a)(1)(b), (6)(a)(2), (6)(a)(3), (6)(a)(4), (6)(a)(5), (6)(b), (6)(b)(1), (6)(b)(2), (6)(b)(3), and (6)(c).

(b) *Amended Everglades Forever Act.* (1) The document entitled “Florida Statute, Title 28, Natural Resources; Conservation, Reclamation, and Use, Section 373.4592, Everglades improvement and management, effective July 1, 2008, also known as the "Everglades Forever Act," as annotated by EPA” is incorporated by reference as described in paragraph (b)(2). The EPA is not incorporating the full text of this document, but correcting specified portions of the statute as directed by the court as indicated by the strike out markings. The EPA is only incorporating by reference these crossed-out portions in the Florida Statute, the “Everglades Forever Act”. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA-HQ-OW-2011-0515) at <http://www.regulations.gov> electronically, at EPA's Water Docket (Address: 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202-566-2426), at the National Archives and Records Administration (NARA), and finally, on the EPA website associated with this rulemaking at http://water.epa.gov/lawsregs/rulesregs/floridaeverglades_index.cfm. For information on the availability of this material at NARA, call 202-741-6030, or go to the following website http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm. EPA adopts and identifies the portions of the document that have strikeout markings as portions of the statute that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the statute that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as federal regulations.

(2) In the Everglades Forever Act, strike the following text:

- (i) The entire paragraph (2)(a);
- (ii) In paragraph (2)(g), the phrase, “and further described in the Long-Term Plan.”;
- (iii) The entire paragraph (2)(j);
- (iv) The entire paragraph (2)(l);
- (v) The entire paragraph (2)(p);
- (vi) The entire paragraphs (3)(b), (3)(c), (3)(d) and (3)(e);
- (vii) In sentence 9 of paragraph (4)(a), the phrase, “design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including”;
- (viii) In sentence 1 of subparagraph (4)(a)(4), the phrase, “however, the district may modify this schedule to incorporate and accelerate enhancements to STA 3/4 as directed in the Long-Term Plan;”;
- (ix) The entire subparagraph (4)(a)(6);
- (x) In subparagraph (4)(e)(2), the entire sentences 7, 8 and 9;
- (xi) In subparagraph (4)(e)(3), the entire sentence 3;
- (xii) In sentence 1 of paragraph (10), the phrase, “to implement the pre-2006 projects and strategies of the Long-Term Plan”, the phrase, “in all parts of the Everglades Protection Area”, and the phrase “and moderating provisions”;
- (xiii) The entire paragraph (10)(a).

(3) EPA is not incorporating the text annotations added by hand to the Everglades Forever Act. These text inserts are included only for the convenience of the reader and to improve the readability of the document.

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